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September 10, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

FILED/ACCEPTED

SEP 10 2012

Federal Communications Commission  
Office of the Secretary

**Attn: CGB Room 3-B431**

**Re: Message For Today Petition for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-1176  
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications for the Deaf and Hard of Hearing Inc., (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Message For Today ("MFT") to exempt the program *Message For Today* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup> Consumer Groups oppose

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<sup>1</sup> *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules*, CG Docket No. 06-181 (August 9, 2012), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0809/DA-12-1309A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0809/DA-12-1309A1.pdf); *MFT Petition for Exemption*, Case No. CGB-CC-1176, CG Docket No. 06-181 (December 20, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021754806> ("MFT Petition"). The Consumer and Governmental Affairs Bureau initially determined that the *MFT Petition* was deficient because it lacked "[v]erification that [MFT] sought additional sponsorship sources or other sources of revenue for captioning" or that MFT "d[id] not otherwise have the means to provide captioning for [its] program." *Letter from the Consumer and*

the petition because MFT appears to be a mere proxy entity for a larger church whose finances are not reflected in the petition.

Consumer Groups acknowledge MFT's efforts to "uplif[t] Christ in people's lives."<sup>2</sup> MFT's requested exemption, however, would deny equal access to its programming to community members who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is critical to ensuring that all viewers can experience the important benefits of video programming on equal terms.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific documentation that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"), as added by the Telecommunications Act of 1996 Act ("1996 Act")<sup>3</sup> and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act of 2010 ("CVAA"),<sup>4</sup> "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome." In its July 20, 2012 Report and

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*Governmental Affairs Bureau*, Case No. CGB-CC-1176, CG Docket No. 06-181 (April 4, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021911437> ("CGB Letter"). MFT then filed a supplement. *MFT Supplement*, Case No. CGB-CC-1176 (April 25, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021919372>.

<sup>2</sup> *MFT Petition* at 1.

<sup>3</sup> Pub. L. 104-104, 110 Stat. 56 (codified as amended at 47 U.S.C. § 613(d)(3)).

<sup>4</sup> Pub. L. 111-260, 124 Stat. 2751 (codified at 47 U.S.C. § 613(d)(3)).

Order, the Commission formally adopted the analysis set forth in its October 20, 2011 Interim Standard Order and Notice of Proposed Rulemaking.<sup>5</sup> In doing so, the Commission interpreted the term “economically burdensome” as being synonymous with the term “undue burden” as defined in section 713(e) of the 1934 Act and ordered the Consumer and Governmental Affairs Bureau to continue to evaluate all exemption petitions using the “undue burden” standard pursuant to the Commission’s amended rules in 47 C.F.R. § 79.1(f)(2)-(3).<sup>6</sup>

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>7</sup> If a petitioner sufficiently demonstrates an inability to afford captioning, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning.<sup>8</sup> Where a petition fails to make either of those showings, it fails to demonstrate that providing

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<sup>5</sup> The *Interim Standard Order* and the *NPRM* were part of a multi-part Commission decision. See *Anglers for Christ Ministries, Inc., New Beginning Ministries, Petitioners Identified in Appendix A, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking, CG Docket Nos. 06-181 and 11-175, 26 FCC. Rcd. 14941 (Oct. 20, 2011) (“*Anglers 2011*”).

<sup>6</sup> *Report and Order, Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission’s Rules; Video Programming Accessibility*, CG Docket No. 11-175, ¶ 8 (July 20, 2012) (“*Economically Burdensome Standard Order*”). In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

<sup>7</sup> See *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28.

<sup>8</sup> See *id.*

captions would be economically burdensome, and the Commission must dismiss the petition.<sup>9</sup>

### **I. MFT's Ability to Afford Captioning**

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.<sup>10</sup> Both showings must demonstrate that the petitioner in fact cannot afford to caption its programming and eliminate the possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

#### **A. The Cost of Captioning MFT's Programming**

To successfully demonstrate that captioning would be economically burdensome, a petitioner must demonstrate a concerted effort to determine "the most reasonable price" for captioning its programming.<sup>11</sup> To allow the Commission and the public to evaluate whether a petitioner's cost estimates are reasonable, it is essential that a petition provide, at a bare minimum, detailed information about the basis and validity of cost estimates for captioning, such as competitive hourly rate quotes and associated correspondence from several established captioning providers.<sup>12</sup>

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<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *The Wild Outdoors*, Case No. CSR 5444, 16 FCC Rcd. 13,611, 13,613-14 ¶ 7 (CSB 2001), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.101.

<sup>12</sup> Compare, e.g., *Outland Sports, Inc.*, Case No. CSR 5443, 16 FCC Rcd. 13,605, 13,607, ¶ 7 (CSB 2001) (approving of a petitioner's inclusion of rate quotes and associated correspondence from at least three captioning providers in its petition) with *The Wild Outdoors*, 16 FCC Rcd. at 13,613-14, ¶ 7 (disapproving of a petitioner's bald assertion of the cost to caption a program without supporting evidence).

MFT provides a single quote for \$235 per show.<sup>13</sup> It does not appear that MFT has undertaken efforts to seek out any competing rate quotes or negotiate with any provider for an affordable rate, which might provide MFT with a basis to provide closed captioning.

#### **B. MFT's Financial Status**

A successful petition also requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed" that demonstrates captioning would present an undue economic burden.<sup>14</sup> MFT notes that it is a "very small" ministry with a limited budget.<sup>15</sup>

It appears, however, that MFT is merely a proxy for the Iowa City Seventh-Day Adventist Church ("ICS DAC"). In particular, MFT's financial report lists a \$15,000 deposit from "Iowa City SDA" which constitutes nearly the entire working budget for MFT's programming, along with other donations that "come from church members."<sup>16</sup> MFT's petition notes that the organization is "endorsed" by the ICS DAC.<sup>17</sup> ICS DAC volunteers are fully responsible for producing MFT's programming.<sup>18</sup> While MFT lists a PO Box as its address, its supplemental filing includes correspondence addressed to MFT Director and Pastor Dale Morrison at ICS DAC's address.<sup>19</sup> The supplement also notes that MFT's programming includes church services conducted by an "Iowa City church" – presumably ICS DAC – and that the MFT Board of Directors, possibly

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<sup>13</sup> *MFT Petition* at 6.

<sup>14</sup> *E.g., Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), *cited with approval in Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

<sup>15</sup> *MFT Petition* at 2.

<sup>16</sup> *Id.* at 2, 8.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *MFT Supplement* at 8 (letter from Select Religious Broadcasting Service).

comprised of ICSDAC leaders, “sees MFT as a ministry **which can be used by other SDA churches.**”<sup>20</sup>

MFT appears to be little more than the programming outreach arm of ICSDAC, fully controlled, funded, and operated by ICSDAC leaders and members of the programming. Whatever ICSDAC’s reasons for separately incorporating MFT, MFT’s budget is not the relevant object of inquiry regarding whether captioning MFT’s programming would impose an undue burden. This is because MFT’s budget simply represents what ICSDAC’s leaders have chosen to allocate for MFT’s programming. When evaluating the financial status of a petitioner, the Commission “take[s] into account the overall financial resources of the provider or program owner,” not “only the resources available for a specific program.”<sup>21</sup>

ICSDAC cannot evade the FCC’s closed captioning rules simply by allocating just enough funding to a wholly controlled entity to cover the cost of programming but not enough funding to cover the cost of closed captioning. If such behavior were permissible, programmers could avoid closed captioning obligations simply by creating new corporate entities for each of their programs and withholding captioning funding, irrespective of whether providing captioning would impose an undue burden. Neither the Telecommunications Act of 1996 nor the FCC’s rules permit such a result.

In order to demonstrate that captioning MFT’s programming would impose an undue burden, ICSDAC must submit information regarding its own finances sufficient to demonstrate that ICSDAC in fact cannot afford to caption MFT’s programming and is not simply choosing to withhold funding for closed captions. Because MFT’s petition contains no information about ICSDAC’s finances, it must be dismissed.

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<sup>20</sup> *Id.* at 5 (emphasis added).

<sup>21</sup> *Anglers 2011*, 26 FCC Rcd. at 14,950, ¶ 17.

## II. Alternative Avenues for Captioning Assistance

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.<sup>22</sup> A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,<sup>23</sup> sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.<sup>24</sup>

As the Consumer and Governmental Affairs Bureau noted, MFT's petition failed to include verification that it had undertaken sufficient efforts to obtain alternate funding for captions.<sup>25</sup> MFT's supplemental filing suggests that it solicited financial assistance from its members,<sup>26</sup> but provides no evidence that MFT ever solicited any assistance specifically for captioning, either from its members or organizations in MFT's community.

## III. Conclusion

MFT's petition fails to include any information suggesting that ICSDAC cannot afford to caption MFT's programming, or that MFT has undertaken sufficient efforts to seek out the most reasonable cost for captioning its programming or exhausted all possible alternative avenues for funding. Accordingly, we respectfully urge the Commission to dismiss the petition and require the programming of MFT and ICSDAC to come into compliance with the Commission's closed captioning rules.

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<sup>22</sup> *Anglers 2011*, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

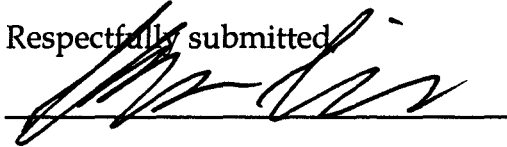
<sup>23</sup> See, e.g., *Engel's Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

<sup>24</sup> See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7, cited with approval in *Anglers 2011*, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

<sup>25</sup> CGB Letter at 1.

<sup>26</sup> MFT Supplement at 2, 5-6.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Blake E. Reid", is written over a horizontal line.

Blake E. Reid

September 10, 2012

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### **CERTIFICATION**

Pursuant to 47 C.F.R. §§ 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing document, these facts and considerations are true and correct to the best of my knowledge.



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Claude Stout  
September 10, 2012

### **CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on September 10, 2012, pursuant to the Commission's aforementioned Request for Comment, a copy of the foregoing document was served by first class U.S. mail, postage prepaid, upon the petitioner:

Message For Today  
P.O. Box 10253  
Cedar Rapids, IA 52410

A handwritten signature in black ink, appearing to read "Niko Perazich", written over a horizontal line.

Niko Perazich  
September 10, 2012